The City of New York

POLICE DEPARTMENT

June 11, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Fabio Checo
Tax Registry No. 932454
40 Precinct
Disciplinary Case No. 2011-06538

The above-named member of the Department appeared before the Court on March 5, 2014, charged with the following:

1. Said Police Officer Fabio Checo, while assigned to the 40th Precinct, on or about November 23, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on one occasion assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of two summonses issued to various individuals. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office. Respondent was represented by Michael Martinez, Esq., Worth, Longworth & London LLP.

Respondent pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Karen Roberts and Sergeant John Ortiz as witnesses.

Sergeant Karen Roberts

Roberts, a 23-year member of the Department, was assigned to the Internal Affairs Bureau (IAB). In 2010, she was involved in a wiretap investigation conducted by the Bronx County District Attorney's Office and the Department. As part ofthis investigation, Roberts monitored the telephone line of Police Officer Person A who was a subject of the investigation and later indicted as a result.

On November 23, 2010, at 0232 hours, Roberts intercepted and monitored a call in which Respondent called Person A (see Department's Exhibit [DX] 1, recording; DX 1a, transcript). Respondent was assigned to the 40 Precinct and Person A was his union delegate. Respondent apologized for waking Person A up but asked him if he could "fix" two summonses "from the 5 0." Person A asked, "When"? and Respondent answered, "Tonight at PK's." This was a reference to a tavern within the confines of the 50 Precinct also known as The Piper's Kilt. When Person A asked if "one of us" issued the summonses, Respondent affirmed that a uniformed member of the service wrote them. Person A told Respondent to place the summonses in his mailbox and he would "see what I could do." Respondent said, "Alright, Thanks bro."

On cross examination, Roberts testified that she began her tenure with the Department at the 44 Precinct, where she worked for 14 years. During that time, Roberts witnessed and personally engaged in ticket fixing. This was done as a favor for someone, often for a

Department member or the member's relative. Roberts was involved in ticket fixing on five or six occasions for family members, friends, and fellow officers. Roberts's past ticket fixing did not come up with her superiors at IAB nor did she volunteer the information to them.

Sergeant John Ortiz

Ortiz, a 20-year member of the Department, previously was assigned to IAB and also worked on the Bronx ticket-fixing investigation. He conducted several hundred official Department interviews during the course of the investigation, based on wiretapped conversations. Ortiz would ask subjects standard questions relating to ticket fixing, its terminology and jargon, and whether the subject facilitated or made a request for a summons to be taken care of.

There was a particular structure as to how a summons would be taken care of. The requesting officer would approach a delegate in his command and make the request. That delegate would contact the delegate at the issuing officer's command, where the second delegate would forward the request. There were different ways of taking care of a summons. First, the issuing officer could just not turn in the summons for processing. If, however, the summons had already been turned in and was processed, the issuing officer could omit information about the testimony in traffic court in order that the summons would be dismissed.

Pursuant to his investigation, Ortiz conducted an interview of Respondent. He first asked Respondent to define some terminology and then asked whether Respondent ever requested that a summons be taken care of. Respondent admitted that he contacted his delegate regarding a parking summons that he received. He received the summons while parking at a bus stop within

the confines of the 50 Precinct. Respondent denied that the summons eventually was taken care of, however, and said that he paid it.

Ortiz questioned Respondent about DX 1. Respondent said that he spoke to Person A about the summons he had received, as well as the summons on another officer's car. Respondent claimed not to recall the other officer, but surmised that he made the request for another officer because the bar that they both were patronizing, The Piper's Kilt, was a popular hangout for police officers.

On cross examination, when asked if he ever engaged in the practice of ticket fixing, Ortiz answered, "No. I am pretty sure that no."

DX 1 was the only recorded conversation in question. When Ortiz asked him about the incident, Respondent recalled that he received a summons but not who he contacted about it. Respondent initially told Ortiz that he texted his delegate about taking care of the summons, but when he later was presented with evidence of the phone call, he instead said that he placed a call. Ortiz agreed that he could not tell from the transcript if the two summonses were issued to a single vehicle or two separate vehicles.

Ortiz initially asked Respondent if he had asked for a summons to be fixed. After Respondent answered yes, Ortiz played the recording. Respondent then recalled that because there were two summonses involved, "there must have been another guy with me that got a summons."

Ortiz's role during this investigation was limited to conducting the interview. Nobody from IAB interviewed officers from the 50 Precinct about the summonses from November 23, 2010, or checked their memo books to see if anyone working at that time wrote any summonses. The summonses that Respondent called Person A about never were recovered. This led Ortiz

to believe that they either never were processed because they never were turned in, or they were misplaced.

Ortiz had been to The Piper's Kilt and knew it as a fairly well-known destination for police officers. Many officers would go there for meal and would pick up food to bring back to their commands.

Ortiz testified that the concept of a self-enforcement zone with regard to parked police vehicles "usually" referred to the immediate vicinity "around the commands." It did not apply to a restaurant. It was possible, however, that "within the 50, it was pretty much well-known don't write summonses around PKs because it's always going to be a cop vehicle there."

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a ten-year member of the Department, was assigned to the 40 Precinct in the Bronx. He currently was assigned to the anticrime unit. Before that, he was assigned to conditions and before that, patrol. On November 23, 2010, Respondent still was assigned to patrol. He patronized The Piper's Kilt often because [redacted]. He characterized its clientele as "mostly police officers and firemen." The police officers were from all over, not just the 50 Precinct.

Respondent stated that it was very difficult to find parking near PK's, so most people double-parked or parked at a bus stop if they were not staying long. Respondent never had received a summons prior to November 23, 2010, for doing so. He claimed that the "general

understanding" was that police officers assigned to the 50 Precinct also patronized the location and, as a courtesy, "they know not to – they use discretion or they just do not write summonses . . . because they don't know whose vehicle they are summonsing."

Respondent's official Department interview was conducted on June 14, 2011. Prior to hearing the recording of his conversation with Person A, Respondent did not recall the specifics of the incident but he would have been there off duty. Respondent was upset that he received the summons because he generally did not have to worry about being ticketed around PK's.

Respondent was asked at trial, "[I]f you remember paying the summonses, what would that mean to you?" He answered it meant that Person A "would speak to the officers from the 50 Precinct and see what happened, if that's still in effect. If it's you know, if it's still self-enforcement or courtesy in that general area." Because he remembered paying the summons, that meant ultimately it was not taken care of.

The conversation with Person A indicated that Respondent asked him about two summonses. Respondent claimed, however, that he did not recall there being two summonses. "I remember my car getting a summons and I don't know if it was someone walking out with me, who might have had a summons on their vehicle." He heard another person's voice on the recording and thought that must have been the case, but Respondent himself might have received both summonses on his own vehicle.

On cross examination, Respondent admitted stating during his official interview that he believed the second summons was for a second officer's car. Based on PK's clientele, Respondent believed that the car belonged to another officer. Respondent contended that an officer would "assume" that his vehicle belonged to a member of the Department, even without a plaque.

FINDINGS AND ANALYSIS

This case involves an allegation of ticket fixing. The specification alleges that Respondent "on one occasion assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of two summonses issued to various individuals." The evidence at trial revealed that there were two summonses at issue. Both were revealed as the result of a wiretap in the criminal ticket-fixing case, for which Police Officer Person A and others now stand indicted. Respondent was assigned to the 40 Precinct and Person A was his union delegate.

Respondent was recorded on the wiretap asking Person A for assistance with two summonses. On the recording, Respondent indicated that the summonses were received at "PK's." This was a reference to a Bronx tavern frequented by police officers. Respondent also indicated that the summonses were issued by a uniformed member of the Department from the 50 Precinct. Person A told Respondent to bring them to his mailbox and he would see what he could do.

Respondent testified at trial that he asked for assistance because the area around PK's was considered a "self-enforcement zone." It was so heavily trafficked by police officers and firefighters that most of the vehicles in the area of the establishment were vehicles of those personnel. When first asked at his official Department interview, Respondent said that he remembered asking for a parking summons to be fixed. Once the recording was played, he said that he thought it must have been two summonses, and that the other driver must have been a Department member too because of PK's clientele. He testified that he eventually paid the ticket.

Respondent's essential argument at trial was that the Advocate proved only that he was guilty of seeking assistance in preventing the adjudication of one summons. He argued that there was no actual proof of a second motorist. He pointed out that IAB never found the second summons or a second driver. For example, the issuer of the summonses, whose tax number was read off the summonses during the wiretapped conversation, was not interviewed to review his recollection or see his summons book to identify license plate numbers. The investigation basically just revealed the importuning phone conversation Respondent had with Person A, recorded on the wiretap, and Respondent's admissions at the official interview.

First, Respondent is on the tape itself asking Person A in no uncertain terms to fix two summonses. By arguing that there was no proof of a second summons or second motorist, Respondent is attempting to invalidate exactly what he told his delegate. Further, he attempts to walk back his interview admission that there must have been a second motorist. His prior recollection carries more weight than his current attempt to undo it.

Moreover, there was a second voice on the recording reading off the tax number of the uniformed Department member that issued the summonses. This suggests that the other person also received a summons and was complaining with Respondent to Person A about it. If he just had been a friend of Respondent who attended PK's with him that night and merely helped him call Person A, all the more reason that Respondent should remember more about him. Instead, Respondent's failure to remember why this second person happened to be there suggests a selective memory that is worthy of suspicion and not credence.

Thus, the Court rejects Respondent's assertion that he was the only motorist involved and that the Department proved only one summons was issued. The recording and his admissions at

the interview, along with a commonsense reading of the episode as a whole, adequately proved that he sought Person A's assistance in preventing the adjudication of two summonses.

Respondent also argued that he should be found not guilty because the summons was issued incorrectly. He asserted that the area around PK's essentially was a self-enforcement zone because its clientele was so heavy with police officers. The Court rejects this assertion. Self-enforcement zones are meant to surround police facilities in order to facilitate police business. PK's was a tavern. The fact that Respondent had not received summonses in the past for parking illegally at PK's does not mean that there was a SEZ there. The idea that SEZs should be extended to popular meal spots for both on duty and off-duty personnel is deeply troubling.

Respondent claimed that he called Person A merely to see if the "SEZ" still was in effect around PK's. Person A's response that he would "see what I could do" thus could have meant that Person A would look into it, not that he would try to prevent the adjudication of the summonses. This theory is at stark odds with Respondent's candid request to Person A during the call to "fix two summonses." He was not simply asking for information, he was asking for help in preventing the adjudication of the summonses.

Finally, Respondent is charged with requesting the assistance of other members to prevent the adjudication of summonses. The recording alone demonstrates that he made the request. Respondent asserted that he paid his ticket. While the Advocate did not bring forth evidence proving or disproving this either way, the fact that Respondent asked Person A to "fix" the summonses is sufficient to prove the specification as charged.

As such, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of requesting the assistance of another Department member to prevent the processing and adjudication of two summonses. Both were issued to himself and another officer at PK's, a Bronx tavern frequented by uniformed members of the service. Respondent asked his delegate to "fix" them and the delegate said that he would see what he could do. There was no evidence, however, that the delegate took any specific action. Respondent claimed that he paid the ticket. There was nothing to show otherwise.

Respondent made several arguments for a lenient penalty. The Court has addressed and rejected, *supra*, his contention that the area around PK's was "sort of a self-enforcing area" due to so many officers eating there. Respondent also argued that he only engaged in one act of asking for assistance in defeating summonses, even if there were two summonses issued to two drivers. Respondent made one call to one delegate, so the incident as a whole should be treated as asking for assistance in preventing the adjudication of a single summons. This would merit the lower penalty of the forfeiture of 10 vacation days. See *Case No. 2011 6384*, p. 17 (July 16, 2013).

The Advocate answered that its policy was to look at not the number of summonses but the number of defendants. This was the more objective method, it argued, because any one defendant could be issued multiple summonses depending on the issuing officer's discretion.

The Advocate correctly stated that the precedent supports its basic position that the issuance of multiple summonses to a single motorist in a single event is treated for penalty purposes as "one." See *Case No. 2011-5722*, Police Comm'r's Mem. (Sept. 25, 2013). Here, however, Respondent interfered, by a single telephone call, with one summons issued to each of two motorists. The fact that the summonses with which he interfered apparently were issued closely in time does not transform his actions into a single event. Indeed, if all of the many members of the service parked near PK's illegally were summonsed, and Respondent called Person A on all of them, he would have interfered with a great many summonses yet still would have made only one call. Engaging in this thought experiment makes Respondent's argument lose its footing quickly. It demonstrates that the Advocate's view of looking at multiple defendants, not multiple contacts with a delegate, is on the whole the fairer way to examine these cases.

In sum, Respondent's argument for a lesser penalty is rejected, as he presented no justification for such. The penalty of 5 suspension days, 25 additional vacation days, and the imposition of one year dismissal probation has been imposed in numerous similar circumstances. See, e.g., *Case No. 2011-6110* (Nov. 12, 2013). It would be inconsistent to impose a different penalty here.

Thus, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent be suspended for 5 days and that he forfeit 25 vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner - Trials

APPROVED

OCT 10 2006

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER FABIO CHECO
TAX REGISTRY NO. 932454
DISCIPLINARY CASE NO. 2011-06538

In 2013, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2011 and 4.0 "Highly Competent" in 2012. He has been awarded two awards for Excellent Police Duty and three for Meritorious Police Duty. [redacted]

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials